IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2007

Coram :-

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.1485 and 1486 of 2007

The Commissioner of Income Tax
Chennai. .. Appellant in both cases/
Respondent in both cases

v.

Tamilnadu Industrial Development
Corporation Ltd.,
19-A Rukmini Lakshmipathy Road
Egmore, Chennai 8 .. Respondent in both cases/
Appellant in both cases

Tax Case Appeal filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 04.09.2006 made in I.T.A.Nos.1413/Mds/2000 & 937 (Mds)/2003 for the assessment years 1994-95 and 1999-2000 against the order of the Commissioner of Income Tax (A) VI, Chennai dated 3.2.2000 made in ITA 165/97-98/SR VIII and dated 18.2.2003 made in ITA Tr. No.127/2002-03 and as against the Deputy Commissioner of Income Tax Spl Range III Chennai order dated 12.3.1997 in PAN/GIR No.4-T/SR VIII and order dated 26.3.2002 made in G. I. No. 4 T for the assessment year 1994-1995 and 1999-2000 respectively.

For Appellant : Mr.J.Nareshkumar,
Jr.Standing Counsel for IT Dept.

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JUDGMENT
(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The Revenue has filed these tax case appeals against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 04.09.2006 made in I.T.A.Nos.1413/Mds/2000 & 937(Mds)/2003. The relevant assessment years are 1994-95 and 1999-2000.

2. The assessee is Tamilnadu Industrial Investment Corporation Ltd., and the main object of the assessee is to promote industrial development in the State through partnership with private enterprises, either as Joint sector or as associate sector or as escort sector. During the course of its business for the assessment year 1994-95 the assessee claimed to write off a sum of Rs.8,98,706/- being the pre project expenses in respect of 13 projects. Those projects were being promoted by the assessee in joint venture. The assessing officer found that the projects were yet to come up and there was no situation to warrant that the projects have been shelved. He disallowed the claim as prematured. For the assessment year 1999-2000, the assessee made a similar claim in a sum of Rs.18,31,054/-, which was allowed by the assessing officer.

3. The assessee filed appeals in respect of both the assessment years although the order for the year 1999-2000 in respect of the pre project expenses was favourable to the assessee, before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the order of the assessing officer in respect of the pre project expenses for the assessment year 1994-95. In respect of the assessment year 1999-2000 though the Commissioner of Income Tax (Appeals) considered a sum of Rs.29,52,391/- being expenditure on unsuccessful project written off, which was the subject matter of appeal, ultimately concluded that the working of the business loss arrived at by the assessing officer made it clear that he had not made a disallowance of the sum of Rs.29,52,391/- as has been represented by the assessee and thus concluded that the issue did not survive.

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4. Against the orders of the Commissioner of Income Tax Appeals, the assessee and the revenue filed second appeals before the Income Tax Appellate Tribunal. The Tribunal held in favour of the assessee by following the decision of this Court in the case of CIT V. SESHASAYEE BROTHERS P.LTD (127 ITR 218). The correctness of the said order is now canvassed in the present tax case appeals by formulating the following substantial question of law :

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Whether on the facts and circumstances of the case, the Tribunal was right in holding that the write off of pre-project expenses was correct in law, when there is a clear factual finding that the projects had not been shelved as not viable and that the write off was premature?

5. Learned counsel appearing for the revenue submitted that this Court in somewhat similar set of facts in the case of E.I.D. PARRY (INDIA) LTD., VS. CIT (257 ITR 253) observed that when the assessee incurred the expenditure for the purpose of setting up a new project, it was clearly in the capital field and not in the revenue field. The abandonment of that project was the abandonment of a project on which capital expenditure had been incurred. The expenditure incurred on that capital project was not something which could be regarded as revenue expenditure laid out exclusively and wholly for the purposes of business of the assessee as what the assessee was trying to start was a new business for the manufacture of a new product. The expenditure incurred therein was clearly capital expenditure and not revenue expenditure. Relying on the said decision the counsel appearing for the revenue sought to argue that the order of the Tribunal is erroneous in nature and requires consideration from this Court.

6. We heard the arguments of the counsel appearing for the revenue and perused the materials available on record.

7. We are not able to concur with the argument of the counsel for the revenue. The assessee, in the above cited decision, was a company which has expended the amounts for the purpose of putting up a new industrial unit. Here, in this case, the assessee is not an industry and it is a State Industrial Development Corporation Ltd., with the object of financing private parties for the purpose of promotion of industrial development either as joint sector or as associate sector or as escort sector. It financed the private parties for the purpose of putting up industries. That makes a total difference between the case with which reliance has been made by the learned counsel for the revenue. However, the Tribunal placed reliance on the decision of this Court in the case of CIT v. SESHASAYEE BROTHERS P. LTD. (127 ITR 218), wherein the assessee, a managing agency company had been investigating several projects and wherever feasible, promoting new industrial undertakings. If the new undertakings materialised the expenses were transferred and recovered from the new unit and the assessee secured the office of managing agents of technical consultancy or the like and earned profits. If, however, the project was unsuccessful, the assessee company wrote off the expenses. In its assessment for 1966-67 and 1967-68 the assessee claimed deduction of the sum of

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Rs.9,865/- and Rs.10,785/- respectively which were project expenses incurred by it in a newsprint paper mill project which did not materialise. The Tribunal held that as the assessee's business was promotion of new ventures, the project expenditure was incidental to the business and hence could not be treated as preliminary or capital in nature and accordingly, allowed the same. The revenue carried the matter on appeal before this Court. This Court, after analysing the various judgments, ultimately held that the expenses incurred by the assessee were in the course of the business as promoters of companies or as managing agents and with a view to augmenting their income and consequently held that the Tribunal was right in its conclusion that the sums in question were allowable as revenue expenditure.

8. The case on hand would be squarely covered by the ratio laid down by the Division Bench of this Court in the case of CIT v. SESHASAYEE BROTHERS P. LTD. (127 ITR 218). Hence, we do not find any question of law for entertainment of the appeals. The appeal are dismissed. No costs. The connected miscellaneous petition is dismissed.

krr/mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   III Floor, Rajaji Bhavan,
   Besant Nagar, Madras 90.

2. The Income Tax Appellant Tribunal,
   Madras 'B' Bench, Chennai.

3. The Commissioner of Income Tax (A) VI,
   Chennai.

4. The Deputy Commissioner of Income Tax,
   Special Range VIII, Chennai 34.

+ 1 cc to Mr. Pushya Sitaraman Advocate SR No. 70570

ASM(CO)
SR/21.1.2008

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